

FELIX CAMACHO

NAME

V-12155

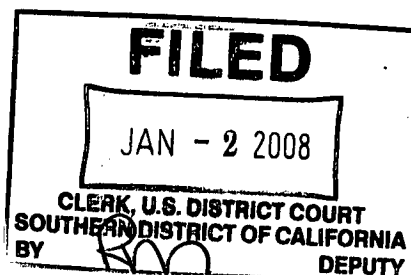
PRISON NUMBER

RJDCF 480 ALTA ROAD

CURRENT ADDRESS OR PLACE OF CONFINEMENT

SAN DIEGO CA 92179

CITY, STATE, ZIP CODE



2254	✓	1983
FILING FEE PAID		
Yes	✓	No
HFP MOTION FILED		
Yes	✓	No
COPIES SENT TO		
Court	✓	ProSe

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FELIX CAMACHO

(FULL NAME OF PETITIONER)

PETITIONER

v.

ROBERT HERNANDEZ, WARDEN

(NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED PERSON HAVING CUSTODY OF PETITIONER [E.G., DIRECTOR OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS])

RESPONDENT

and

The Attorney General of the State of California, Additional Respondent.

'08 CV 0016 BEN LSP

Civil No.

(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 U.S.C. § 2254
 BY A PERSON IN STATE CUSTODY

- Name and location of the court that entered the judgment of conviction under attack: SAN DIEGO SUPERIOR COURT OF CALIFORNIA
- Date of judgment of conviction: NOVEMBER 11-13-03
- Trial court case number of the judgment of conviction being challenged: SCD 168940
- Length of sentence: 35 yrs to life

12-30-07

5. Sentence start date and projected release date: _____
 NOVEMBER 13, 2003 , DATE OF RELEASED ? _____
6. Offense(s) for which you were convicted or pleaded guilty (all counts): 207(a) , 1192.7(c)
2735(a) , 12032.7(a)
7. What was your plea? (CHECK ONE)
 (a) Not guilty ☒
 (b) Guilty ☐
 (c) Nolo contendere ☐
8. If you pleaded not guilty, what kind of trial did you have? (CHECK ONE)
 (a) Jury ☐
 (b) Judge only ☒
9. Did you testify at the trial?
☐ Yes ☒ No

DIRECT APPEAL

10. Did you appeal from the judgment of conviction in the **California Court of Appeal**?
☒ Yes ☐ No
11. If you appealed in the **California Court of Appeal**, answer the following:
 (a) Result: DENIED
 (b) Date of result, case number and citation, if known: D-043552 ,
 (c) Grounds raised on direct appeal: ABUSE OF DISCRETION AT SENTENCING
FAILURE TO STRIKE A PRIOR
12. If you sought further direct review of the decision on appeal by the **California Supreme Court** (e.g., a Petition for Review), please answer the following:
 (a) Result: PETITION DENIED
 (b) Date of result, case number and citation, if known: SAME AS IN DIRECT APPEAL
 (c) Grounds raised: SAME AS ON APPEAL

13. If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to that petition:

- (a) Result: NO
- (b) Date of result, case number and citation, if known: _____
- (c) Grounds raised: _____
- _____
- _____
- _____

COLLATERAL REVIEW IN STATE COURT

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Superior Court?

☒ Yes ☐ No

15. If your answer to #14 was "Yes," give the following information:

- (a) California Superior Court Case Number: HC-18445
- (b) Nature of proceeding: WRIT OF HABEAS COPUS
- (c) Grounds raised: ILLEGAL SENTENCE
- (d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☒ No
- (e) Result: DENIED SEE ATTACHMENT "A"
- (f) Date of result: MARCH 28, 2006

16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Court of Appeal?

☒ Yes ☐ No

17. If your answer to #16 was "Yes," give the following information:

- (a) **California Court of Appeal** Case Number: D-049463
- (b) Nature of proceeding: WRIT OF HABEAS CORPUS
- (c) Grounds raised: INEFFECTIVE ASSISTANCE OF COUNSEL AND ILLEGAL ILLEGAL SENTENCE
- (d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☒ No
- (e) Result: DENIED
- (f) Date of result: DECEMBER 28, 2006

18. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the **California Supreme Court**?

☒ Yes ☐ No

19. If your answer to #18 was "Yes," give the following information:

- (a) **California Supreme Court** Case Number: S152681
- (b) Nature of proceeding: WRIT OF HABEAS CORPUS
- (c) Grounds raised: TRIAL COURT ABUSED IT DISCRETION AND APPLICATION OF THE THREE STRIKE LAW WAS ABUSED OF DISCRETION AND INEFFECTIVE ASSISTANCE OF COUNSEL
- (d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☒ No
- (e) Result: DENIED
- (f) Date of result: SEPTEMBER 25, 2007

20. If you did *not* file a petition, application or motion (e.g., a Petition for Review or a Petition for Writ of Habeas Corpus) with the California Supreme Court containing the grounds raised in this federal Petition, explain briefly why you did not:

NOT APPLICABLE

COLLATERAL REVIEW IN FEDERAL COURT

21. Is this your first federal petition for writ of habeas corpus challenging this conviction?

☒ Yes ☐ No (If "YES" SKIP TO #22)

(a) If no, in what federal court was the prior action filed? _____

(i) What was the prior case number? _____

(ii) Was the prior action (CHECK ONE):

☐ Denied on the merits?

☐ Dismissed for procedural reasons?

(iii) Date of decision: _____

(b) Were any of the issues in this current petition also raised in the prior federal petition?

☐ Yes ☐ No

(c) If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this second or successive petition?

☐ Yes ☐ No

CAUTION:

- **Exhaustion of State Court Remedies:** In order to proceed in federal court you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted some grounds by raising them before the California Supreme Court, you must first present *all* other grounds to the California Supreme Court before raising them in your federal Petition.
- **Single Petition:** If you fail to set forth all grounds in this Petition challenging a specific judgment, you may be barred from presenting additional grounds challenging the same judgment at a later date.
- **Factual Specificity:** You must state facts, not conclusions, in support of your grounds. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do. A rule of thumb to follow is — state who did exactly what to violate your federal constitutional rights at what time or place.

GROUND FOR RELIEF

22. State *concisely* every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and/or facts supporting each ground.

VIOLATION OF THE SIXTH AMENDMENT :THE APPLICATION

(a) **GROUND ONE:** _____
 OF THE THREE STRIKE LAW ON OUT OF STATE CASE MORE THEN 20 YEARS
 IS UNCONSTITUTIONAL AND ABUSE OF DISCRETION.

Supporting FACTS (state *briefly* without citing cases or law) _____

THE TRIAL COURT APPLYING THE THREE STRIKE LAW ON THE PETITIONERS
 FOR A CASE THAT WAS MORE THEN 20 YEARS OLD AND WHEN THE PETITIONER
 WAS ONLY A MINOR AND CALIFORNIA DOES NOT RECOGNIZE THE LEGAL
 THEORY USED IN THE FLORIDA CASE AND THE FLORIDA SUPREME COURT
 NO LONGER RECOGNIZED THE THEORY INWHICH THE PETITIONER WAS
 CONVICTED WHEN HE WAS A MINOR IS A VIOLATION OF THE SIXTH
 AMENDMENT AND ABUSE OF DISCRETION OF THE TRIAL COURT.

Did you raise **GROUND ONE** in the California Supreme Court?

☒ Yes ☐ No.

(b) **GROUND TWO:** PETITIONER RECEIVED INEFFECTIVE ASSISTANCE OFM

COUNSEL ON APPEALS.

Supporting FACTS (state *briefly* without citing cases or law):

PETITIONER HAD TOLD HIS APPELLATE ATTORNEY THAT HE DID NOT
SPEAK ENGLISH AND UNDERSTOOD VERY LITTLE TO NONE, THAT SPANISH
WAS HIS LANGUAGE AND THAT HE VERY LIMITED EDUCATION. THE PETITIONER
PROCEEDED TO TELL THE APPELLATE ATTORNEY OF THE FACT THAT THE
TRIAL COUNSEL HAD LIED TO HIM SO HE WOULD TAKE THE PLEA. THE
APPELLATE ATTORNEY NEVER REPLY TO PETITIONERS LETTERS.
PETITIONER HAS THE CONSTITUTIONAL RIGHT TO BRING A MERIT
ISSUE BEFORE THE COURT OF APPEALS.

Did you raise **GROUND TWO** in the California Supreme Court?

☒ Yes ☐ No.

Supporting FACTS (state *briefly* without citing cases or law): _____

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

XX ☒ Yes ☐ No.

(d) **GROUND FOUR:**

PETITIONER RECEIVED INEFFECTIVE OF COUNSEL DURING THE PLEA
THE PLEA BARGAIN PROCEEDINGS.

Supporting FACTS (state *briefly* without citing cases or law):

DURING THE TRIAL PLEA PROCEEDINGS , THE TRIAL COUNSEL MISLEAD
THE PETITIONER INTO THE PLEA AND HE TOLD THE PETITIONER
IF HE ENTERED INTO THE PRIOR ALSO HE WOULD NOT RECEIVE A LIFE
SENTENCE , BECAUSE HIS PREVIOUS CRIME WAS WHEN HE WAS A MINOR
AND MORE THEN 20 YEARS OLD.

Did you raise **GROUND FOUR** in the California Supreme Court?

☒ Yes ☐ No.

23. Do you have any petition or appeal now pending in any court, either state or federal, pertaining to the judgment under attack?

☒ Yes ☐ No

24. If your answer to #23 is "Yes," give the following information:

(a) Name of Court: DISTRICT COURT OF APPEALS OF FLORIDA-THIRD DISTRICT

(b) Case Number: 3D07-116

(c) Date action filed: OCTOBER 26, 2006

(d) Nature of proceeding: PETITION FOR ORDER OF PRIOR TRANSCRIPTS

(e) Grounds raised: _____

(f) Did you receive an evidentiary hearing on your petition, application or motion?

☐ Yes ☒ No

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing: _____

NONE

(b) At arraignment and plea: _____

(c) At trial: _____

(d) At sentencing: _____

(e) On appeal: _____

(f) In any post-conviction proceeding: _____

(g) On appeal from any adverse ruling in a post-conviction proceeding: _____

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

☐ Yes ☒ No

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

☐ Yes ☒ No

(a) If so, give name and location of court that imposed sentence to be served in the future:

(b) Give date and length of the future sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

☐ Yes ☒ No

28. Date you are mailing (or handing to a correctional officer) this Petition to this court: _____

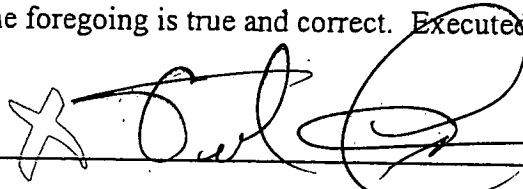
Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding.

SIGNATURE OF ATTORNEY (IF ANY)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

12-30-07

(DATE)


SIGNATURE OF PETITIONER

VERIFICATION

**STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

(C.C.P. SEC. 446 & 2015.5; 28 U.S.C. SEC. 1746)

I, Felix Camacho DECLARE UNDER THE PENALTY OF PERJURY
THAT: I AM THE Declarant/Prisoner IN THE ABOVE ENTITLED ACTION;
I HAVE READ THE FOREGOING DOCUMENTS AND KNOW THE CONTENTS THEREOF AND THE SAME IS
TRUE OF MY OWN KNOWLEDGE, EXCEPT AS TO MATTERS STATED THEREIN UPON INFORMATION, AND
BELIEF, AND AS TO THOSE MATTERS, I BELIEVE THEM TO BE TRUE.

EXECUTED THIS Dec 29th DAY OF December, 2007 AT R.J.D.
STATE PRISON, 480 Alta Road, San Diego, CA 92179

(SIGNATURE)

(DECLARANT/PRISONER)

PROOF OF SERVICE BY MAIL

(C.C.P. SEC. 1013 (a) & 2015.5; 28 U.S.C. SEC. 1746)

I, Raymond Murillo, AM A RESIDENT OF R.J.D. STATE PRISON, IN THE COUNTY
OF S.D. STATE OF CALIFORNIA; I AM OVER THE AGE OF EIGHTEEN (18) YEARS OF AGE AND AM I AM
NOT A PARTY OF THE ABOVE-ENTITLED ACTION. MY STATE PRISON ADDRESS IS:

480 ALTA Road San Diego CA 92179

ON 12-30-07, I SERVED THE FOREGOING:

WRIT OF HABEAS CORPUS

(SET FORTH EXACT TITLE OF DOCUMENT(S) SERVED)

ON THE PARTY(S) HEREIN BY PLACING A TRUE COPY(S) THEREOF, ENCLOSED IN A SEALED ENVELOPE
(S), WITH POSTAGE THEREON FULLY PAID, IN THE UNITED STATES MAIL, IN A DEPOSIT BOX SO
PROVIDED AT Richard J. Donovan Correctional Facility

U.S.D.C.

SOUTHERN DISTRICT COURT

880 FRONT STREET

RM 4290

San Diego CA 92101

THERE IS DELIVERY SERVICE BY UNITED STATES MAIL AT THE PLACE SO ADDRESSED, AND THERE IS
REGULAR COMMUNICATION BY MAIL BETWEEN THE PLACE OF MAILING AND THE PLACE SO
ADDRESSED. I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATE: 12/30/07

(DECLARANT/PRISONER)

JS44

(Rev. 07/89)

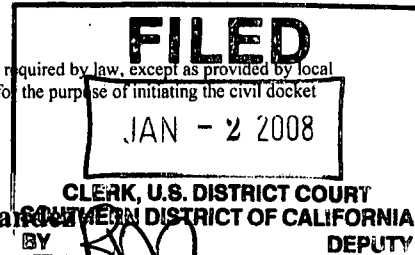
CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Felix Camacho

Robert Hernandez



(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

2254	1983
FILING FEE PAID	
Yes	No
MOTION FILED	
Yes	No
COPIES SENT TO	
Court	Prosec

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) : ATTORNEYS (IF KNOWN)

Felix Camacho
PO Box 799003
San Diego, CA 92179
V-12155

'08 CV 0016 BEN LSP

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | |
|----------------------------|----------------------------|----------------------------|----------------------------|
| PT | DEF | PT | DEF |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
- Citizen of This State Incorporated or Principal Place of Business in This State
- Citizen of Another State Incorporated and Principal Place of Business in Another State
- Citizen or Subject of a Foreign Country Foreign Nation

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395K) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(e)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input checked="" type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE 1/2/2008

SIGNATURE OF ATTORNEY OF RECORD

R. M. M. M.